

1 EXHIBIT 3

2 AGREEMENT FOR [type] CONSULTANT SERVICES

3 THIS AGREEMENT made and entered into this _____
4 day of _____, 20__, between the County of Fresno, a
5 political subdivision of the State of California, (hereinafter
6 called "COUNTY"), and
7 **[Consultant's firm name]** _____,
8 Architect / Engineer, (A [State] Corporation / Partnership),
9 **[Individual's name]** _____ a sole proprietor
10 doing business as **[Firm name]**,
11 **[address]** _____, (hereinafter called
12 "CONSULTANT").

13 W I T N E S S E T H:

14 WHEREAS, COUNTY plans to [construct a new Woodward Park
15 Regional Library located near the east corner of the
16 intersection of E. Champlain Drive and E. Perrin Avenue],
17 [construct a new Caruthers Neighborhood Library located at the
18 northeast corner of W. Superior Street and S. Henderson Road]
19 hereinafter called the Project(s); and

20 WHEREAS, said CONSULTANT is qualified and willing to
21 provide the COUNTY the professional, architectural and
22 engineering services needed for the Project(s).

23 WHEREAS, said consultant has been selected in accordance
24 with COUNTY's Ordinance Code Chapter 4.10 on the selection of
25 architects, engineers, and other professionals to provide the
26 architectural / engineering services necessary for the
27 Project(s); and

28 WHEREAS, said CONSULTANT represents that it is qualified

1 and willing to perform the architectural / engineering
2 services required by the COUNTY for the Project(s).

3 NOW, THEREFORE, the parties hereto have and by these
4 presents do agree as follows:

5 I. CONTRACTING WITH CONSULTANT: BASIC PARAMETERS

6 A. The COUNTY hereby contracts with the CONSULTANT as
7 an independent contractor to provide consultant services as
8 required for the project. Said services are described in
9 Article II and enumerated in Article III herein.

10 B. The CONSULTANT shall retain structural engineering,
11 electrical engineering, and other subconsultants as CONSULTANT
12 requires to assist in completing the work. All subconsultants
13 used by CONSULTANT shall be approved by the COUNTY before they
14 are retained by the CONSULTANT, which approval shall not be
15 unreasonably withheld. Subconsultants listed in Exhibit ____,
16 attached hereto and incorporated herein, shall be considered
17 as approved by the COUNTY. Should CONSULTANT retain any
18 subconsultants, compensation to be paid to CONSULTANT under
19 Article V below, shall not be increased.

20 C. The CONSULTANT shall coordinate and complement the
21 COUNTY's specifications for asbestos and lead-based paint
22 abatement if asbestos or lead-based paint abatement is a
23 portion of the contract construction or demolition of a
24 project.

25 D. The CONSULTANT's services shall be performed as
26 expeditiously as is consistent with professional skill and the
27 orderly progress of the work, based on project schedules
28 prepared by the COUNTY.

1 E. The CONSULTANT and affiliated subconsultants shall
2 not submit bids, or subbids, for the contract construction
3 phase of the project for which CONSULTANT provides services
4 hereunder. The CONSULTANT and its subconsultants, and all
5 other service providers, shall not provide any project-related
6 services for, or receive any project-related compensation from
7 any construction contractor, subcontractor or service provider
8 awarded a construction contract for all or any portion of the
9 project for which CONSULTANT provides services hereunder. The
10 CONSULTANT and its subconsultants, and all other service
11 providers, may provide services for, and receive compensation
12 from a construction contractor, subcontractor or service
13 provider who has been awarded a construction contract for all
14 or any portion of the project, provided that any such services
15 which are rendered, and any compensation which is received
16 therefor relates to work outside the scope of this Agreement.

17 F. The contact person(s) for the CONSULTANT shall be:
18 _____ (tel _____, fax _____, email, ____, web ____.)

19 II. DESCRIPTION OF THE WORK COVERED BY THIS AGREEMENT:

20 The work covered by this Agreement is for the
21 consultant services needed for construction of [a new Woodward
22 Park Regional Library], [a new Caruthers Neighborhood
23 Library].

24 [*Refer to RFP, Article II.A., "Project Overview and*
25 *Description"*].

26 III. CONSULTANT'S SERVICES:

27 [*Consultant's Services will generally follow those*
28 *described in the RFP.*]

1 IV. COUNTY'S OBLIGATIONS:

2 [County's Obligations will generally follow those
3 described in the RFP].

4 V. COMPENSATION:

5 A. Total Fee:

6 1. Notwithstanding any other provisions in this
7 Agreement, the Total Fee (Basic Fee plus Extra Services
8 Allocation) for the services required under this Agreement
9 shall be the total sum of \$_____.

10 B. Basic Fee:

11 1. Notwithstanding any other provisions in this
12 Agreement, the Basic Fee for the services required under
13 Article III shall be the total sum of \$_____. Within the
14 Total Fee limitation described in Section V.B.1. above, the
15 Basic Fee for each Phase of the project shall be divided as
16 follows for purposes of payment scheduling:

17	Phase 1 - Pre-Design	10%
18	Phase 2 - Schematic Design	10%
19	Phase 3 - Design Development	15%
20	Phase 4 - Construction Documents	40%
21	Phase 5 - Bidding and Award	5%
22	Phase 6 - Construction Observation	15%
23	Phase 7 - Post Construction	5%

24 2. All expenses incidental to CONSULTANT's
25 performance of services under Article III of this Agreement
26 shall be borne by CONSULTANT. Incidental expenses include,
27 but may not be limited to, transportation and travel, postage
28 and courier services, photo and duplicating services,

1 telephone and facsimile charges, computer storage media,
2 drawing and plotting media, printing of "check print" plans
3 and plan sets and documents specifically required by the
4 provisions of Article III. of this Agreement.

5 C. Extra Services:

6 1. There will be an additional maximum allocation
7 of \$_____ to pay for authorized Extra Services. Payment
8 of Extra Services in excess of \$_____ is unauthorized and
9 can only be made pursuant to a prior written amendment to this
10 Agreement.

11 2. The CONSULTANT shall not undertake any Extra
12 Services without the advance authorization of the COUNTY
13 Representative. The CONSULTANT and the COUNTY shall expressly
14 confirm in writing the authorization and maximum cost for any
15 such services before the CONSULTANT is compensated for any
16 work thereon. CONSULTANT shall not add markup percentages or
17 costs to subconsultant's costs unless expressly authorized in
18 writing by the COUNTY.

19 3. Payment for Extra Services will be at the hourly
20 and cost rates set forth in Exhibit A, attached hereto and
21 incorporated herein. The rates listed therein are in effect
22 for the duration of the Agreement. Such rates for Extra
23 Services may be renegotiated annually at CONSULTANT's request,
24 if this Agreement is in effect longer than one (1) year.

25 4. The following are consultant services which are
26 considered as not included in Article III herein, but may be
27 required as Extra Services.

28 a. Providing construction observation services

1 when construction exceeds sixty (60) days beyond the original
2 construction contract schedule as adjusted for weather delays
3 and as adjusted for delays by CONSULTANT-caused change orders,
4 negligent errors, or omissions.

5 b. Conveying or transmitting construction
6 documents for other agency approval when the CONSULTANT is
7 granted prior authorization by the COUNTY.

8 c. Making changes to documents which are
9 ordered by the COUNTY subsequent to COUNTY approval thereof.

10 d. Preparing change orders when the project
11 scope is changed on the basis of COUNTY-initiated requests,
12 and such changes are not a result of negligent errors, acts,
13 or omissions by the CONSULTANT.

14 e. If necessary, advising and assisting the
15 COUNTY with respect to any settlement or litigation arising
16 out of any failure of the CONTRACTOR to fully perform the
17 construction contract in accordance with the contract
18 documents.

19 f. Performing a visual inspection, within one
20 year following the date of substantial completion (if
21 requested by the COUNTY, and reporting in writing on
22 detectable defects in workmanship or material.

23 g. Providing site surveys and soil
24 investigations.

25 h. Providing interior design services.

26 i. Providing unforeseen, extraordinary, or
27 unique services or items not covered nor normally included in
28 the Basic Fee, but authorized by the COUNTY Representative.

1 j. If requested by COUNTY, as provided for in
2 Section IV.__., to retain, when required for the project, an
3 independent testing laboratory to provide necessary soils,
4 chemical, structural, mechanical, electrical or other tests
5 and reports as may be necessary to assure quality control and
6 construction compliance with the plans and specifications.

7 k. If requested by the COUNTY, as provided for
8 in Section IV.__., to retain, when required for the project, a
9 specialized independent testing organization to provide
10 mechanical, air balance, electrical or other tests and reports
11 as may be required to assure quality control and construction
12 compliance with the plans and specifications.

13 l. Providing those items under Article III
14 which are identified as Extra Services.

15 5. If the CONSULTANT becomes aware of potential
16 unforeseen expenses that would not be covered by the Basic Fee
17 of this Agreement or for Extra Services as delineated in this
18 Article V., Section C., CONSULTANT shall inform the COUNTY of
19 the extent and nature of such expenses or services. Upon
20 mutual agreement of the CONSULTANT and the COUNTY, this
21 Agreement may be amended in writing to cover such unforeseen
22 expense or cost of Extra Services.

23 6. In the event the COUNTY Representative expressly
24 authorizes Extra Services, CONSULTANT shall keep complete
25 records showing the hours and description of activities worked
26 by each person who works on the project and all costs and
27 charges applicable to the Extra Services work authorized.
28 Should there be a claim for Extra Services, the CONSULTANT

1 understands and agrees that he or she must specifically
2 identify the activity, performer of the activity, reason for
3 the activity, and COUNTY official requesting the activity, or
4 the claim will be denied. CONSULTANT shall be responsible for
5 all subconsultants keeping similar records. The CONSULTANT
6 shall not stop the work, including the design in other areas
7 unrelated to the Extra Services request or claim, unless it
8 can be shown the project design cannot proceed while a claim
9 or request for Extra Services is being evaluated.

10 D. Payments:

11 1. Progress payments will be made by the COUNTY
12 upon receipt of the CONSULTANT's monthly invoices and approval
13 by COUNTY thereof, based on the COUNTY's evaluation of the
14 completion of the respective components of the project.
15 Invoices shall clearly identify and the Phase of the work,
16 agreed maximum project fee, and phase and description of the
17 work performed, and shall be submitted with the documentation
18 identified in paragraph V.D.5. below. CONSULTANT shall submit
19 separate invoices for Extra Services, accompanied with copies
20 of any subconsultant's invoices and costs for approved
21 incidentals. Invoices shall be forwarded to:

22 Claude Dechow, AIA, County Architect
23 Fresno County Department of Public Works
24 2220 Tulare Street, Suite 608
25 Fresno, CA 93721-2106

26 2. Upon receipt of a proper invoice, the COUNTY
27 Department of Public Works will take a maximum of five (5)
28 working days to review, approve, and submit it to the COUNTY

1 Auditor-Controller/Treasurer-Tax Collector. Unsatisfactory or
2 inaccurate invoices will be returned to the CONSULTANT for
3 correction and resubmittal. Payment, less retention, will be
4 issued to CONSULTANT within forty (40) calendar days of the
5 date the Auditor-Controller/Treasurer-Tax Collector receives
6 the approved invoice.

7 3. COUNTY is entitled to and shall withhold a ten
8 percent (10%) retention from the earned compensation in
9 accordance with the provisions of Article VII. of this
10 Agreement.

11 4. An unresolved dispute over a possible negligent
12 error or omission may cause payment of CONSULTANT fees in the
13 disputed amount to be withheld by the COUNTY.

14 5. Concurrently with the invoices, the CONSULTANT
15 shall provide its certification acceptable to the COUNTY, and
16 shall provide, on COUNTY request, copies of issued checks,
17 receipts, or other COUNTY pre-approved documentation, that
18 complete payment, less a ten percent (10%) retention, has been
19 made by CONSULTANT to all subconsultants as provided herein
20 for all previous invoices paid by the COUNTY. However, the
21 parties do not intend that the foregoing creates in any
22 subconsultant or subcontractor a third party beneficiary
23 status or third party beneficiary rights, and expressly
24 disclaim any such status or rights.

25 6. Final invoice, and separate invoice for
26 retentions, shall be submitted to COUNTY no later than thirty
27 (30) days after the project is completed. The CONSULTANT
28 shall provide its certification acceptable to the COUNTY, on

COUNTY request, that all subconsultants have received full payment for services rendered and work performed on the project. Payment for retentions shall not be made until all post-construction services are completed, including but not limited to record drawings approval, operation and maintenance manual review, and furnishing of required reports.

7. In the event the COUNTY reduces the scope of the project, the CONSULTANT will be compensated on a pro rata basis for actual work completed and accepted by the COUNTY in accordance with the terms of this Agreement.

VI. COMPENSATION RECORDS

The CONSULTANT shall keep complete records showing the hours and description of activities performed by each person who works on the project and all associated costs or charges applicable to work covered by the Basic Fee and approved Extra Services. The CONSULTANT will be responsible for all subconsultants keeping similar records.

VII. RETENTION FROM EARNED COMPENSATION:

A. In addition to any amounts withheld under Article III.[phase const obsrv], COUNTY is entitled to and shall withhold a ten percent (10%) retention from the earned compensation of the CONSULTANT. Such retention from earned compensation may, at the COUNTY'S option, be applied to all phases of the consultant services to be provided under this agreement, including those phases completed and Extra Services.

B. At the request and expense of the CONSULTANT, securities equivalent to the amount withheld shall be

1 deposited with the COUNTY or with a state or federally
2 chartered bank in California as the escrow agent. If such
3 request is made by the CONSULTANT, an escrow agreement shall
4 be prepared by CONSULTANT in substantial compliance with
5 Exhibit __, attached hereto and incorporated herein, and it may
6 be executed by the Director of the Department of Public Works.

7 C. When the construction contract has been
8 satisfactorily performed to the eighty percent (80%) point of
9 completion without major pending claims, disputes or other
10 matters in question between the parties, the COUNTY may, at
11 its discretion, reduce the retention from ten percent (10%) to
12 five percent (5%), and the resulting surplus funds, less any
13 current-phase or Extra Service retention, will be paid by
14 COUNTY to CONSULTANT at that time. The final retention of
15 five percent (5%) will be paid in accordance with the payment
16 provisions of this Agreement and upon receipt of proper
17 invoice, within forty-five (45) days after completion of all
18 of CONSULTANT's obligations under this Agreement, including
19 the resolution of all claims and disputes between COUNTY and
20 CONSULTANT.

21 VIII. AUDITS, ACCOUNTING AND INSPECTIONS ACCESS:

22 A. The CONSULTANT shall at any time during regular
23 business hours, and as often as the COUNTY may deem necessary,
24 make available for examination by State authorities or COUNTY
25 Auditor-Controller / Treasurer-Tax Collector, or their
26 authorized representatives, all of CONSULTANT's records and
27 data with respect to matters covered by this Agreement. The
28 CONSULTANT shall permit State or COUNTY authorities to audit

1 and inspect all invoices, materials, payrolls, records of
2 personnel, conditions of employment, and other data relating
3 to matters covered by this Agreement.

4 B. The CONSULTANT shall be subject to the examination
5 and audit of the Auditor General for a period of three (3)
6 years after final payment under this Agreement (Government
7 Code Section 8546.7)

8 IX. ERRORS OR OMISSION CLAIMS AND DISPUTES:

9 A. Definitions:

10 1. A "Consultant" is a duly licensed Architect or
11 Engineer, or other provider of professional services, acting
12 as a business entity (owner, partnership, corporation, joint
13 venture or other business association) in accordance with the
14 terms of an Agreement with the COUNTY.

15 2. A "Claim" is a demand or assertion by one of the
16 parties seeking, as a matter of right, adjustment or
17 interpretation of contract terms, payment of money, extension
18 of time, change orders, or other relief with respect to the
19 terms of the contract. The term "Claim" also includes other
20 disputes and matters in question between the COUNTY and
21 CONSULTANT arising out of or relating to the contract. Claims
22 must be made by written notice. The provisions of Government
23 Code section 901, et seq., shall apply to every claim made to
24 COUNTY. The responsibility to substantiate claims shall rest
25 with the party making the claim. The term "Claim" also
26 includes any allegation of an error or omission by the
27 CONSULTANT.

28 B. In the spirit of cooperation between the COUNTY and

1 CONSULTANT, the following procedures are established in the
2 event of any claim or dispute alleging a negligent error, act,
3 or omission, of the CONSULTANT.

4 1. Claims, disputes or other matters in question
5 between the parties, arising out of or relating to this
6 Agreement, shall not be subject to arbitration, but shall be
7 subject to the following procedures.

8 2. The project manager of COUNTY and CONSULTANT
9 shall meet and confer and attempt to reach agreement on any
10 dispute, including what damages have occurred, the measure of
11 damages and what proportion of damages, if any, shall be paid
12 by either party. The parties agree to consult and consider
13 the use of mediation or other form of dispute resolution prior
14 to resorting to litigation.

15 3. If the COUNTY and CONSULTANT cannot reach
16 agreement under the immediately preceding paragraph IX.B.2.,
17 the disputed issues may, upon concurrence by all parties, be
18 submitted to a panel of three (3) for a recommended
19 resolution. The CONSULTANT and the COUNTY shall each select
20 one (1) member of the panel, and the third member shall be
21 selected by the other two panel members. The discovery rights
22 provided by California Code of Civil Procedure for civil
23 proceedings shall be available and enforceable to resolve the
24 disputed issues. Either party requesting this dispute
25 resolution process shall, when invoking the rights to this
26 panel, give to the other party a notice describing the claims,
27 disputes and other matters in question. Prior to 20 days
28 before the initial meeting of the panel, both parties shall

1 submit all documents such party intends to rely upon to
2 resolve such dispute. If it is determined by the panel that
3 any party has relied on such documentation, but has failed to
4 previously submit such documentation on a timely basis to the
5 other party, the other party shall be entitled to a 20-day
6 continuance of such initial meeting of the panel. The
7 decision by the panel is not a condition precedent to
8 arbitration, mediation or litigation.

9 4. Upon receipt of the panel's recommended
10 resolution of the disputed issues, the COUNTY and the
11 CONSULTANT shall again meet and confer and attempt to reach
12 agreement. If the parties still are unable to reach
13 agreement, each party shall have recourse to all appropriate
14 legal and equitable remedies.

15 C. The procedures to be followed in the resolution of
16 claims and disputes may be modified at any time by mutual
17 agreement of the parties hereto.

18 D. The CONSULTANT shall continue to perform its
19 obligations under this Agreement pending resolution of any
20 dispute, and the COUNTY shall continue to make payments of all
21 undisputed amounts due under this Agreement.

22 E. When a claim by either party has been made alleging
23 the CONSULTANT's negligent error, act, or omission, the COUNTY
24 Project Manager and the CONSULTANT shall meet and confer
25 within twenty-one (21) days after the written notice of the
26 claim has been provided.

27 X. JOINDER OF PARTIES:

28 The CONSULTANT, the CONSULTANT's consultants of any tier,

1 subcontractors of any tier, suppliers and construction lenders
2 shall all be bound by the dispute resolution provisions of
3 this Agreement, and immediately upon demand of COUNTY or
4 CONSULTANT, shall participate in and shall become parties to
5 the dispute resolution process, provided they have signed any
6 document that incorporates or refers to the dispute resolution
7 provisions of this Agreement. Failure of CONSULTANT, whether
8 intended or inadvertent, to ensure that such nonparties have
9 signed such a document shall inure only to CONSULTANT's
10 detriment, if any there be. COUNTY shall not suffer a
11 detriment by CONSULTANT's action or inaction in this regard.
12 If such a party after due notice fails to appear at and
13 participate in the dispute resolution proceedings, the panel
14 established in accordance with the provisions of paragraph
15 IX.B.3. shall make a decision based on evidence introduced by
16 the party or parties who do participate.

17 XI. CONSULTANT'S OBLIGATIONS RELATING TO CONSTRUCTION CLAIMS:

18 A. The CONSULTANT will review and analyze construction
19 contract claims and recommend resolution of them as soon as
20 possible following receipt of demand by COUNTY.

21 B. Within a reasonable time after receipt of a claim,
22 the CONSULTANT shall provide a written analysis of the claim
23 to the COUNTY, signed by the CONSULTANT and any affected sub-
24 consultants. The written analysis shall include the
25 CONSULTANT's professional opinion of the responsibility for
26 payment of the claim, with supporting facts and documentation.
27 A copy of the written analysis shall be provided to the
28 respective insurance adjusters for CONSULTANT and any affected

1 sub-consultant.

2 C. Upon receipt of a claim, the CONSULTANT may also
3 take one (1) or more of the following actions, within ten (10)
4 days of receipt of a claim:

5 1. Request additional supporting data from the
6 claimant, requiring that such data be supplied within ten (10)
7 days of the request;

8 2. Submit a schedule to the parties indicating when
9 the CONSULTANT expects to respond to the claim, which schedule
10 shall not exceed thirty (30) days from CONSULTANT's original
11 receipt of the claim;

12 3. Recommend rejection of the claim in whole or in
13 part, stating the reasons for such rejection;

14 4. Recommend approval of the claim by the other
15 party, or

16 5. Suggest a compromise.

17 D. In every case, CONSULTANT shall provide its
18 recommended resolution of a claim within thirty (30) days from
19 the original receipt of claim, unless the CONSULTANT obtains
20 COUNTY's prior written approval.

21 XII. INDEPENDENT CONTRACTOR:

22 A. In performance of the work, duties, and obligations
23 assumed by CONSULTANT under this Agreement, it is mutually
24 understood and agreed that CONSULTANT, including any and all
25 of CONSULTANT's officers, agents and employees, will at all
26 times be acting and performing as an independent contractor,
27 and shall act in an independent capacity and not as an
28 officer, agent, servant, employee, joint venturer, partner or

1 associate of the COUNTY. Furthermore, COUNTY shall have no
2 right to control or supervise or direct the manner or method
3 by which CONSULTANT shall perform its work and function.
4 However, COUNTY shall retain the right to administer this
5 Agreement so as to verify that CONSULTANT is performing its
6 obligations in accordance with the terms and conditions
7 thereof. CONSULTANT and COUNTY shall comply with all
8 applicable provisions of law and the rules and regulations, if
9 any, of governmental authorities having jurisdiction over
10 matters the subject thereof.

11 B. Because of its status as an independent contractor,
12 CONSULTANT shall have absolutely no right to employment rights
13 and benefits available to COUNTY employees. CONSULTANT shall
14 be solely liable and responsible for providing to, or on
15 behalf of its employees all legally-required employee
16 benefits. In addition, CONSULTANT shall be solely responsible
17 and save COUNTY harmless from all matters relating to payment
18 of CONSULTANT's employees, including compliance with Social
19 Security, withholding, and all other regulations governing
20 such matters. It is acknowledged that during the term of this
21 Agreement CONSULTANT may be providing services to others
22 unrelated to the COUNTY or to this Agreement.

23 XIII. PARTIES BOUND BY AGREEMENT:

24 This Agreement shall be binding upon the COUNTY, the
25 CONSULTANT, and their successors in interest, legal
26 representatives, executors, administrators, and assigns with
27 respect to all covenants as set forth herein.

28 XIV. REQUIRED APPROVALS:

1 It is understood that the CONSULTANT shall not assign,
2 sublet, subcontract, or transfer any of CONSULTANT's rights,
3 duties, or obligations under this Agreement, without the prior
4 express, written consent of the COUNTY. Such consent and
5 approval may be given only by the COUNTY Board of Supervisors.

6 XV. COMPLIANCE WITH LAWS:

7 CONSULTANT shall comply with all applicable federal,
8 state, and local laws, ordinances, regulations, and Fresno
9 County Charter Provisions in effect at the time of
10 CONSULTANT's performance of the professional services to be
11 provided hereunder.

12 XVI. GOVERNING LAW:

13 A. Any controversy or claim arising out of or relating
14 to this Agreement which cannot be amicably settled without
15 court action shall be litigated either in a state court for
16 Fresno County, California, or in the U.S. District Court for
17 the Eastern District of California, located in Fresno County.

18 B. The rights and obligations of the parties and all
19 interpretations and performance of this Agreement shall be
20 governed in all respects by the laws of the State of
21 California.

22 XVII. AMENDMENTS:

23 Any changes to this Agreement requested either by the
24 COUNTY or CONSULTANT may only be effected if mutually agreed
25 upon in writing by duly authorized representatives of the
26 parties hereto. This Agreement shall not be modified or
27 amended, nor shall any rights of a party hereto be waived,
28 except by such a writing.

1 XVIII. CONSULTANT'S LEGAL AUTHORITY:

2 [FOR CALIFORNIA CORPORATIONS:] Each individual executing
3 this Agreement on behalf of CONSULTANT hereby covenants,
4 warrants, and represents: (i) that he or she is duly
5 authorized to execute and deliver this Agreement on behalf of
6 such corporation in accordance with a duly adopted resolution
7 of the corporation's board of directors and in accordance with
8 such corporation's articles of incorporation or charter and
9 bylaws; (ii) that this Agreement is binding upon such
10 corporation; and (iii) that CONSULTANT is a duly organized and
11 legally existing corporation in good standing in the State of
12 California.

13 [FOR CALIFORNIA PARTNERSHIPS:] Each individual executing
14 this Agreement on behalf of CONSULTANT hereby covenants,
15 warrants, and represents: (i) that he or she is duly
16 authorized to execute and deliver this Agreement on behalf of
17 such partnership in accordance with its Partnership Agreement;
18 and (ii) that this Agreement is binding upon such partnership;
19 and (iii) that CONSULTANT is a duly organized and legally
20 existing partnership in the State of California.

21 [FOR OUT OF STATE CORPORATIONS:] Each individual
22 executing this Agreement on behalf of CONSULTANT hereby
23 covenants, warrants, and represents: (i) that he or she is
24 duly authorized to execute and deliver this Agreement on
25 behalf of such corporation in accordance with a duly adopted
26 resolution of the corporation's board of directors and in
27 accordance with such corporation's articles of incorporation
28 or charter and bylaws; (ii) that this Agreement is binding

1 upon such corporation; (iii) that CONSULTANT is duly organized
2 and legally existing corporation in good standing in the State
3 of _____, is registered with the California Secretary of
4 State to do business in the State of California as a foreign
5 corporation, and; (iv) that each individual executing or
6 attesting this Agreement on behalf of CONSULTANT hereby
7 covenants, warrants, and represents:

8 a. That this Agreement is binding upon such
9 corporation; and

10 b. That CONSULTANT shall deliver to COUNTY all
11 necessary certificates and assurances indicating CONSULTANT's
12 right to conduct business in the State of California including
13 but not limited to certificates filed with the California
14 Secretary of State to conduct business in California and the
15 name and California-based address of CONSULTANT's agent for
16 receipt of service of process.

17 [FOR SOLE PROPRIETOR:] Each individual executing this
18 Agreement on behalf of CONSULTANT, a sole proprietor, hereby
19 covenants, warrants, and represents: (i) that he or she is
20 duly authorized to execute and deliver this Agreement on
21 behalf of such sole proprietor; and (ii) that this Agreement
22 is binding upon such proprietor.

23 XIX. HOLD HARMLESS:

24 A. CONSULTANT shall hold harmless and indemnify COUNTY,
25 its officers, agents, and employees, against the payment of
26 any and all costs and expenses (including reasonable attorney
27 fees and court costs), damages, claims, suits, losses, and
28 liability for bodily and personal injury to or death of any

1 person or for loss of any property resulting from or arising
2 out of any negligent or wrongful acts, errors or omissions of
3 CONSULTANT, its officers, agents, and employees, in performing
4 or failing to perform any work, services, or functions under
5 this Agreement.

6 B. COUNTY and CONSULTANT hereby declare their mutual
7 intent to cooperate in the defense of any claim, suit, or
8 other action alleging liability, arising from the negligent
9 performance or failure to perform of any COUNTY contractor or
10 subcontractor in connection with the project. Such
11 cooperation may include an agreement to prepare and present a
12 cooperative defense after consultation with CONSULTANT's
13 professional liability insurance carrier.

14 XX. LIABILITY INSURANCE:

15 A. Prior to commencing the duties under the Agreement
16 with the COUNTY, the CONSULTANT shall furnish the COUNTY, at
17 no additional cost to the COUNTY, certificates for the
18 following insurance policies which shall be kept in force at
19 all times during the term of the Agreement (i.e., until the
20 Agreement is terminated or it expires), and for such
21 additional time as may be specified herein with respect to a
22 particular type of policy.

23 1. Commercial General Liability Insurance or
24 Comprehensive General Liability Insurance, naming the COUNTY
25 as an additional insured, with limits of not less than
26 \$1,000,000 per occurrence.

27 2. Comprehensive Automobile Liability Insurance
28 with limits for bodily injury of not less than \$250,000 per

1 person, \$500,000 per accident and for property damages of not
2 less than \$50,000, or such coverage with a combined single
3 limit of \$500,000.

4 3. Worker's Compensation insurance policy as
5 required by the California Labor Code.

6 4. Project Specific Professional Liability
7 Insurance:

8 a. In the minimum amount of at least
9 [\$3,000,000 coverage per claim, with an annual aggregate of at
10 least \$3,000,000 for the Woodward Park Regional Library],
11 [\$1,000,000 coverage per claim, with an annual aggregate of at
12 least \$1,000,000 for the Caruthers Neighborhood Library], and
13 with a deductible not to exceed \$50,000. A deductible greater
14 than \$50,000 will be accepted upon the COUNTY receiving
15 satisfactory, certified information of the CONSULTANT's
16 ability to support such a deductible. The financial ability
17 to support the difference between the \$50,000 and greater
18 deductible amount requested by CONSULTANT shall be guaranteed
19 by any of the following:

20 1. Cash deposit with a trustee bank.

21 2. Irrevocable letter of credit issued by
22 a bank for a period sufficient for the COUNTY to determine if
23 there is a claim to be made against the CONSULTANT, e.g. six
24 months after termination of Agreement.

25 3. Withholding payment under terms of the
26 Agreement for the same period as under Article VII. herein.

27 b. CONSULTANT and subconsultants shall make
28 full disclosure, in writing to the COUNTY, of all pending and

1 open claims and disputes during the course of this Agreement
2 that affect the specified aggregate limits of the Professional
3 Liability Insurance policy.

4 c. Professional Liability Insurance shall
5 extend for a minimum of two (2) years past the date of final
6 payment to CONSULTANT, including the resolution of all claims,
7 disputes, and matters in question regarding the project.

8 d. In the event that CONSULTANT voluntarily
9 changes, or involuntarily changes, due to circumstances beyond
10 its control, its Professional Liability Insurance policy
11 carrier during the period such coverage is required to be in
12 force (as specified in the immediately preceding subparagraph
13 XX.A.4.c), such new policy shall include prior acts coverage
14 retroactive, at least, to the date of execution of this
15 Agreement. CONSULTANT may, at its option and expense,
16 purchase supplemental or "tail" coverage from the former
17 policy carrier, negotiate a retroactive reporting date with
18 the new policy carrier for claims incurred but not reported as
19 of the date of change in policy carrier, and shall in any
20 event maintain Professional Liability Insurance in a manner
21 that provides continuous coverage to the COUNTY throughout the
22 term of this Agreement, and for a period of two (2) years past
23 the issuance of final payment to the CONSULTANT.

24 e. The CONSULTANT may, at its option and
25 expense and upon approval of the COUNTY, provide specific
26 project professional liability insurance for itself and all
27 sub-consultants for this project, extending from the beginning
28 of project Phase 1 to two (2) years past the issuance of final

1 payment hereunder to the CONSULTANT. This time period
2 specifically includes that time required for the resolution of
3 all claims and disputes.

4 f. The CONSULTANT shall provide a vicarious
5 interest endorsement to its Professional Liability Insurance
6 policy, indemnifying the COUNTY for liabilities, damages
7 and/or judgments, and reasonable attorney's fees and related
8 costs (a) to the proportionate extent caused by the negligent
9 errors, acts or omissions of CONSULTANT and (b) in excess of
10 the deductible obligation and subject to all of the terms,
11 conditions and exclusions of the Professional Liability
12 Insurance policy.

13 B. All policies shall be with admitted insurers
14 licensed to do business in the State of California.
15 CONSULTANT shall give COUNTY at least thirty (30) days written
16 advance notice of any expiration, cancellation or reduction in
17 the coverage of any of the aforesaid policies.

18 C. The COUNTY, its officers, agents and employees,
19 individually and collectively, shall be named as an additional
20 insured under the policy for Commercial General Liability
21 Insurance or Comprehensive General Liability Insurance, but
22 only insofar as the operations under this Agreement are
23 concerned. Such coverage of COUNTY as additional insured
24 shall apply as primary insurance and any other insurance, or
25 self-insurance, maintained by the COUNTY, its officers,
26 agents, and employees, shall be excess only and not
27 contributing with insurance provided under the CONSULTANT's
28 policies herein.

1 D. In the event CONSULTANT fails to keep in effect at
2 all times insurance coverage as herein provided, the COUNTY
3 may, in addition to other remedies it may have, suspend or
4 terminate this Agreement upon the occurrence of such event.

5 XXI. OWNERSHIP OF DOCUMENTS:

6 A. CONSULTANT understands and agrees that COUNTY shall
7 retain full ownership rights of the drawings and the work-
8 product of CONSULTANT for the project, to the fullest extent
9 permitted by law. In this regard, CONSULTANT acknowledges and
10 agrees that CONSULTANT's services are on behalf of COUNTY and
11 are "works made for hire," as that term is defined in
12 copyright law, by COUNTY; that the drawings and work-product
13 to be prepared by CONSULTANT are for the sole and exclusive
14 use of COUNTY, and shall be the sole property of COUNTY and
15 its assigns, and the COUNTY and its assigns shall be the sole
16 owner of all patents, copyrights, trademarks, trade secrets
17 and other contractual and intangible rights of any kind or
18 nature in connection therewith; that all the contractual or
19 intangible rights of any kind of nature, title, and interest
20 in and to the drawings and work-product will be transferred to
21 COUNTY by CONSULTANT, and CONSULTANT will assist COUNTY to
22 obtain and enforce patents, copyrights, trademarks, trade
23 secrets, and other contractual and intangible rights of any
24 kind or nature relating to said drawings and work-product;
25 that COUNTY shall be and become the owner of such drawings and
26 work product, free and clear of any claim by CONSULTANT or
27 anyone claiming any right through CONSULTANT. CONSULTANT
28 further acknowledges and agrees that COUNTY's ownership rights

1 in such drawings and work product shall apply regardless of
2 whether such drawings or work product, or any copies thereof,
3 are in the possession of CONSULTANT, or any other person,
4 firm, corporation, or entity. For the purpose of this
5 Agreement the terms "drawings and work-product" shall mean all
6 reports and study findings commissioned to develop the design
7 of the project, drawings and schematic or preliminary design
8 documents of the project, certified reproducibles of the
9 original final construction contract drawings of the project,
10 specifications of the project, the approved opinion of
11 probable construction cost of the project, record drawings of
12 the project, as-built plans of the project, and discoveries,
13 developments, designs, improvements, inventions, formulas,
14 processes, techniques, or specific know-how and data generated
15 or conceived or reduced to practice or learning by CONSULTANT,
16 either alone or jointly with others, that result from the
17 tasks assigned to CONSULTANT by COUNTY under this Agreement.

18 B. If the Agreement is terminated during or at the
19 completion of the preliminary design phase under Article III,
20 a reproducible copy of the preliminary design documents shall
21 be submitted by CONSULTANT to the COUNTY, which may use them
22 to complete the project in future phases.

23 C. If the project is terminated at the completion of
24 the construction document phase of the project, certified
25 reproducibles on .003" mylars of the original final
26 construction contract drawings, specifications, and approved
27 opinion of probable construction cost shall be submitted by
28 CONSULTANT to COUNTY.

1 D. Documents, including drawings and specifications,
2 prepared by CONSULTANT for any project pursuant to this
3 Agreement are not intended or represented to be suitable for
4 reuse by COUNTY or others on extensions of the services
5 provided for this project or any other project. Any use of
6 completed documents for other projects and/or any use of
7 uncompleted documents will be at COUNTY's sole risk and
8 without liability or legal exposure to CONSULTANT.

9 E. COUNTY has requested that certain machine-readable
10 information and data ("CAD data") be provided by CONSULTANT
11 for this project under this Agreement. Such CAD data is more
12 specifically described in Article III. CONSULTANT shall not
13 be liable for claims, liabilities or losses arising out of, or
14 connected with (1) the modification or misuse by COUNTY, or
15 anyone authorized by COUNTY, of such CAD data; or (2) decline
16 of accuracy or readability of CADD data due to inappropriate
17 storage conditions or duration; or (3) any use by COUNTY, or
18 anyone authorized by COUNTY, of such CAD data for additions to
19 this project or for the completion of this project by others,
20 or for other projects.

21 XXII. TIME OF COMPLETION:

22 A. The parties hereto agree to the Production Schedule
23 shown in Exhibit ____, attached hereto and incorporated herein.

24 B. CONSULTANT shall not be held responsible for delays
25 caused by COUNTY review, or by similar reasons beyond
26 CONSULTANT's control.

27 C. CONSULTANT shall complete all services required
28 under this Agreement in accordance with [Exhibit ____] [the

1 schedule _____ above] and this Agreement shall expire on
2 _____ unless it is extended in writing by the Director
3 of the Department of Public Works or his/her designee, or it
4 is terminated earlier in accordance with the provisions of
5 Article XXIII.

6 D. Time is of the essence in the completion of the
7 services covered by this Agreement. Failure of the CONSULTANT
8 to meet any specific date in the above-referenced schedule,
9 once such failure exceeds fourteen (14) calendar days past the
10 specified completion date (unless the delay is attributable to
11 the COUNTY or State), is sufficient cause to immediately
12 terminate this Agreement at the option of the COUNTY in
13 accordance with Article XXIII.

14 XXIII. TERMINATION OF AGREEMENT:

15 A. This Agreement may be terminated without cause at
16 any time by the COUNTY upon thirty (30) calendar days written
17 notice. If the COUNTY terminates this Agreement, the
18 CONSULTANT shall be compensated for services satisfactorily
19 completed to the date of termination based upon the
20 compensation rates and subject to the maximum amounts payable
21 agreed to in Article V, together with such additional services
22 satisfactorily performed after termination which are expressly
23 authorized by the COUNTY Representative in order to conclude
24 the work performed to date of termination.

25 B. If the CONSULTANT terminates the Agreement for
26 reasons other than material breach by the COUNTY, the
27 CONSULTANT shall reimburse the COUNTY, up to a maximum of
28 [\$2,500, \$3,500 or \$10,000] for the actual expense of issuing

1 a Request For Proposal (RFP), engaging a new CONSULTANT, and
2 the new CONSULTANT's cost in becoming familiar with the
3 previous CONSULTANT's design.

4 C. The COUNTY may immediately suspend or terminate this
5 Agreement in whole or in part, where in the determination of
6 the COUNTY there is:

- 7 1. An illegal or improper use of funds;
- 8 2. A failure to comply with any term of this
9 Agreement;
- 10 3. A substantially incorrect or incomplete report
11 submitted to the COUNTY;
- 12 4. Improperly performed service.

13 D. In no event shall any payment by the COUNTY
14 constitute a waiver by the COUNTY of any breach of this
15 Agreement or any default which may then exist on the part of
16 the CONSULTANT. Neither shall such payment impair or
17 prejudice any remedy available to the COUNTY with respect to
18 the breach or default. The COUNTY shall have the right to
19 demand of the CONSULTANT the repayment to the COUNTY of any
20 funds disbursed to the CONSULTANT under this Agreement, which,
21 in the judgment of the COUNTY and as determined in accordance
22 with the procedures of Article IX

23 ("Errors or Omissions Claims and Disputes"), were not expended
24 in accordance with the terms of this Agreement. The
25 CONSULTANT shall promptly refund any such funds upon demand.

26 E. The terms of this Agreement, and the services to be
27 provided thereunder, are contingent on the approval of funds
28 by the appropriating government agency. Should sufficient

funds not be allocated, the services provided may be modified,
or this Agreement terminated at any time by giving the
CONSULTANT thirty (30) days advance written notice.

XXIV. CONFLICT OF INTEREST:

The CONSULTANT shall comply with the provisions of the
Fresno County Department of Public Works Conflict of Interest
Code, attached hereto as Exhibit ___ and incorporated herein.
Such compliance shall include the filing of annual statements
pursuant to the regulations of the State Fair Political
Practices Commission.

XXV. ENTIRE AGREEMENT:

This Agreement constitutes the entire agreement between
the COUNTY and the CONSULTANT with respect to the subject
matter hereof and supersedes all previous negotiations,
proposals, commitments, writings, advertisements,
publications, and understandings of any nature whatsoever
unless expressly included in this Agreement.

XXVI. SEVERABILITY:

Should any provision herein be found or deemed to be
invalid, this Agreement shall be construed as not containing
such provision, and all other provisions which are otherwise
lawful shall remain in full force and effect, and to this end
the provisions of this Agreement are hereby declared to be
severable.

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1 IN WITNESS WHEREOF, the parties hereto have caused this
2 Agreement to be executed as of the day and year first above
3 written.

4 **CONTRACTOR / CONSULTANT NAME**

5
6 BY: _____ BY: _____
7 _____ CHAIRMAN, BOARD OF
8 TITLE: _____ SUPERVISORS
9 _____

10
11 (Insert address, tel, fax)
12

13 FEDERAL ID NO. APPROVED AS TO LEGAL FORM
14 _____ PHILLIP S. CRONIN, COUNTY
15 COUNSEL

16 REVIEWED AND RECOMMENDED FOR APPROVAL
17 BY: _____
18 BY: _____
19 _____
20 RICHARD L. BROGAN, DIRECTOR
21 DEPARTMENT OF PUBLIC WORKS

22 APPROVED AS TO ACCOUNTING
23 FORM

24 Fund/Subclass/Org/Divn/Acct/
25 Memo or Program BY: _____
26 _____
27 Laton Library AUDITOR-CONTROLLER/
28 0001/0107/10000/7530/8150/84743 TREASURER-TAX COLLECTOR

COUNTY ADMINISTRATIVE OFFICE
BY: _____

—
COUNTY OF FRESNO

BZ:bz

06/23/00

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